IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.MC.No. 1682 of 2007()

CC.1/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONERS/ACCUSED NO.1 & 2:

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1. ASHISH MITHRA,
MANAGING DIRECTOR,
M/S.EXTERIOR - INTERIORS PVT. LTD.,
13 CAMAC STREET, RAJ KAMAL BUILDING,
4TH FLOOR, CALCUTTA - 70007.

2. ARCHANA KAPOOR,
DEPUTY GENERAL MANAGER,
M/S.EXTERIOR - INTERIORS PVT. LTD.,
13 CAMAC STREET, RAJ KAMAL BUILDING,
4TH FLOOR, CALCUTTA - 70007.

BY ADV. SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE

RESPONDENT:

THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
ANGAMALY POLICE STATION.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1682 of 2007

Dated this the 25th day of May 2007

O R D E R

The petitioners are accused in a prosecution initiated against them under Section 420 read with 34 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police. Investigation commenced on the basis of a complaint filed by the defacto complainant before the learned Magistrate which was referred to the police under Section 156(3) Cr.P.C. The crux of the allegation is that the petitioners were induced to part with money on the basis of incorrect and false representation resulting in unjust loss to the defacto complainant. The petitioners are Managing Director, Deputy General Manager and Manager respectively of a company which had entered into a franchise agreement with the defacto complainant.

2. Cognizance has been taken by the learned Magistrate on the basis of the final report. Summons has been issued to the petitioners. The petitioners have rushed to this court with this

petition under Section 482 Cr.P.C to quash the proceedings initiated against them.

3. What is the reason? The learned counsel for the petitioners submits that even if the entire allegations were accepted, it can reveal only a civil dispute and unjustified resort is made to the criminal adjudicatory process with the transparent intention of vexing and harassing the petitioners. The petitioners 1 and 2 who are permanently at Calcutta will have to come to Kerala to appear and thus unnecessary and undeserved hardship and difficulties would result.

4. I must alertly note that I am called upon to invoke the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. Such jurisdiction is to be invoked sparingly and in exceptional cases that too only when the interests of justice compellingly demand such a course. The mere fact that the accused may be entitled for discharge/acquittal at later stages of the criminal trial will not ipso facto justify invocation of the extraordinary jurisdiction. I shall carefully avoid any detailed discussion on merits about the factual disputes raised. Suffice it to say that I am satisfied that this is not a fit case where such extraordinary

jurisdiction deserves to be invoked. This is a case, according to me, in which the petitioners must attempt to laim discharge at the stage of Section 239/240 Cr.P.C or acquittal at later stages.

5. The learned counsel for the petitioner submits that if unnecessary insistence on personal appearance of the accused were made, that would result in great prejudice, hardship and loss to the petitioners. I am satisfied that appropriate observations/directions can be issued in this regard.

6. In the result, this Criminal Miscellaneous Case is dismissed but it is observed that the petitioners shall be at liberty to raise the plea of discharge at the stage of Section 239/240 Cr.P.C. Till such decision on the question of framing charge is made, the learned Magistrate shall not insist on the personal appearance of the petitioners/accused. Till then, they shall be permitted to appear through counsel.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007